

Mr. Emerson's dedication to excellence makes him a role model for his family and co-workers, and I am pleased to honor his impressive accomplishments and wish him well as he begins his service as United States Postmaster in Rome, Georgia.

INTRODUCTION OF THE NATIVE AMERICAN EQUAL RIGHTS ACT OF 2000

HON. CURT WELDON

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 19, 2000

Mr. WELDON of Pennsylvania. Mr. Speaker, I rise today to introduce the "Native American Equal Rights Act of 2000."

Most Americans believe that ours should be a color-blind society in which an individual's merit, not his or her race, is the determining factor in whether that individual climbs the ladder of success to achieve the American dream. Most Americans, therefore, oppose any racial preferences in our Nation's laws. Most Americans would be surprised, therefore, to learn that non-Indians may be lawfully discriminated against under what are known as "Indian preference laws."

The Federal Indian preference laws do three things. First, Federal law allows discrimination against all non-Indians with respect to employment at the Bureau of Indian Affairs and the Indian Health Service. Second, Federal law allows discrimination against all non-Indians with regard to certain Federal contracts. Third and finally, Federal law provides an exception to the civil rights laws that allows discrimination against all non-Indians in employment at the two Federal agencies and with respect to contracts.

Mr. President/Mr. Speaker, African-Americans, Asian-Americans, and white Americans should have the same rights to compete for jobs at the Bureau of Indian Affairs and the Indian Health Service that Indians do. Likewise, all Americans should have equal rights, regardless of race, to compete for Federal contracts. Finally, the civil rights laws should protect all Americans equally from the scourge of discrimination. That is why I believe that the Indian preference laws are wrong.

A recent decision by the Supreme Court of the United States has called the constitutionality of Indian preference laws into serious question. On February 23, 2000, the Supreme Court handed down its decision in *Rice v. Cayetano*. The case involved a challenge to a law of Hawaii that limits the right to vote for trustees of the Office of Hawaiian Affairs to persons who are defined under the law as either "Hawaiian" or "native Hawaiian" by ancestry. Harold Rice, who was the plaintiff in the case, is a citizen of Hawaii who nevertheless does not qualify, under the Hawaii law, as "Hawaiian" or "native Hawaiian." Mr. Rice sued Hawaii because he believed that this law deprives him of his constitutional right to vote because of his race.

The U.S. District Court for Hawaii rejected Mr. Rice's claim. In doing so, the District Court argued that the Congress and native Hawaiians have a guardian-ward relationship that is analogous to that which exists between the U.S. government and Indian tribes. Based on this analogy, the District Court determined that

the Hawaii is entitled to the same constitutional deference that the Supreme Court has shown towards the Congress when it enacts laws under its authority over Indian affairs.

The U.S. Court of Appeals for the Ninth Circuit affirmed the District Court's decision. Mr. Rice asked the Supreme Court review his case. The Court agreed to do so.

By a vote of 7-2, the Supreme Court reversed the decision of the Court of Appeals and ruled in Mr. Rice's favor. In his opinion for the Court, Justice Kennedy rejected the lower courts' use of the analogy of the Hawaii law limiting voting rights to the Federal laws granting preferences to Indians.

Under the Federal Indian preference laws, individuals who have "one-fourth or more degree Indian blood and... [are] members of a Federally-recognized tribe" are given preferences with respect to hiring and promotions at the Bureau of Indian Affairs of the U.S. Department of the Interior, as well as with regard to employment and subcontracting under certain Federal contracts. The Supreme Court upheld the Indian preference laws in its 1974 decision in a case called *Morton v. Mancari*. Even though the Indian preference laws clearly have the effect of giving one race an advantage over others, the *Mancari* Court held that they are "political rather than racial in nature" because they are not "directed towards a 'racial' group consisting of 'Indians,' but rather only to members of 'federally recognized' tribes."

In his opinion for the Supreme Court in *Rice*, Justice Kennedy said that Hawaii had tried to take the *Mancari* precedent too far. "It does not follow from *Mancari*," Justice Kennedy wrote, "that Congress may authorize a State to establish a voting scheme that limits the electorate for its public officials to a class of tribal Indians, to the exclusion of all non-Indian citizens."

In a technical legal sense, in the *Rice* case the Supreme Court did not reconsider its ruling in the *Mancari* case that the Indian preference laws are constitutional. Instead, the Court avoided the issue by attempting to draw a distinction between the Indian preference law from the Hawaii voting rights law.

In a broader philosophical sense, though, the *Rice* decision seriously calls into question the constitutionality of the Indian preference laws. The racial preference for voters in Hawaii that the Court held to be unconstitutional clearly was politically and not racially motivated. The Court found, however, that a well-meaning political motivation behind a law that has the effect of favoring one race over another does not make it constitutional. Likewise, it is clear that what motivated the Congress to pass the Indian preference laws was not racism, but rather political favoritism. The effect of the Indian preference laws, though, is no less to favor one race over all others than was the case with the Hawaii voting rights law. Under *Rice*, this political motivation should not save the Indian preference law from being found to be unconstitutional for the same reason as was the Hawaii law.

In an insightful opinion article in *The Washington Times* on May 5, 2000, Thomas Jipping, Director of the Free Congress Foundation's Center for Law and Democracy, recognized the inconsistency between the Supreme Court's decisions with respect to the Indian preference laws and the Hawaii voting rights law. "Either it is legitimate to avoid the

Constitution," Mr. Jipping wrote, "by relabeling a racial preference [as a political one] or it is not." "Gimmicks such as relabeling or declaring the context in which a case arises as 'unique' [are] simply not sufficient to overcome a constitutional principle so fundamental and absolute." "Both the U.S. District Court and the U.S. Court of Appeals in this case believed that Hawaii's relationship with Hawaiians is similar to the United States[s] relationship with Indian tribes," Mr. Jipping noted. "They were right and the U.S. Constitution applies to both of them," he asserted. "Rather than preserve a precedent through verbal sleight-of-hand," Mr. Jipping concluded, "the Supreme Court should have said the fundamental constitutional principle that decided *Rice* also calls its precedent in *Mancari* into question."

Mr. Speaker, it is absolutely clear to me that statutory provisions that grant special rights to Indians with respect to employment, contracting, or any other official interaction with an agency of the United States are racial preference laws. Racial preference laws are fundamentally incompatible with the equal protection of the laws that is provided to all Americans by the Constitution. The Constitution simply does not tolerate racial preferences of any kind, for any reason.

The Congress, no less than the Supreme Court, has a duty to uphold the Constitution of the United States. We should not wait for the Supreme Court to recognize the very serious constitutional mistake it made when it upheld the constitutionality of the Indian preference laws. Congress should repeal the Indian preference laws now.

The legislation that I am introducing today, the "Indian Racial Preferences Repeal Act of 2000," does just that. I ask unanimous consent for the full text of my bill, as well as a section-by-section analysis, to be printed in the *RECORD* immediately following the conclusion of my remarks.

IN HONOR OF THE CYPRIOT PARTICIPANTS IN THE WORLD MARCH OF WOMEN 2000

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 19, 2000

Mrs. MALONEY of New York. Mr. Speaker, I rise today to pay tribute to the 75 Cypriot women participating in this week's World March of Women 2000. The World March of Women is an annual event that occurs in my district that focuses on ending worldwide poverty and violence against women. Women from around the world participated in the march and a great number of them were from Cyprus, representing twenty-four Cypriot Women's Associations and Labor Syndicates. The march took place in front of the United Nations Building where the participants met with U.N. Secretary General Kofi Annan. On October 17, 2000, the official International Day for the Eradication of Poverty, was a time to acknowledge the grave disparities in economic prosperity throughout the world as well as the disturbing issue of violence against women.

The Cypriot participants, hoping to bring attention to the twenty-six year conflict on their Mediterranean island, urged the U.N. and its